

Japan Labor Issues

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Volume 3 Number 16

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KEY TOPIC

MHLW's Basic Policies Based on the Act on Comprehensive Promotion of Labor Policies

The Basic Policies on Labor (referred to below as the “Basic Policies”), based on the Act on Comprehensive Promotion of Labor Policies, was approved by Cabinet decision on December 28, 2018. In addition to indicating the necessity of Work Style Reform and the basic approach to its promotion so that all workers can make the most of their abilities, the policies are a consolidation of the “basic matters related to labor policies” based on the objectives and principles of existing laws, and were compiled on the basis of discussions in the Ministry of Health, Labour and Welfare’s Labor Policy Council Committee on Basic Policies. Building on these Basic Policies, the Ministry says, “We will work towards the realization of a society where everyone can have a sense of purpose and make the most of their abilities.”

Basic approach to promote Work Style Reform

On June 29, 2018, the 196th session of the Diet passed the Work Style Reform Bill (Act on the Arrangement of Related Acts to Promote Work Style Reform), which includes legal upper limit on overtime work hours and prohibitions on unreasonable disparities in treatment between regular workers and other workers such as part-time workers, fixed-term workers, and dispatched workers, and eight key labor laws were amended collectively.¹ Under the provisions of Article 3 of the Bill, the Employment Measures Act (Act No. 132 of 1966) was revised and renamed as by the Act on Comprehensive Promotion of Labor Policies (officially called the Act on Comprehensive Promotion of Labor Policies, Stabilization of Employment and Improvement of Workplace Environment). The Basic Policies were formulated for the first time in accordance with

Article 10, Paragraph 1 of the Act which stipulates that basic policies for comprehensive promotion of necessary labor policies must be established so that all workers can make the most of their abilities.

The Basic Policies emphasize the need for Work Style Reform, calling for “reforms of Japan’s labor system from workers’ perspective, and change in the corporate culture and values, so that each and every worker can have a more positive outlook on their future.” With the establishment of the “basic matters related to labor policies” called for by the Act, basic approaches are clarified the comprehensive promotion of labor policies for realization of Work Style Reform in cooperation with local public bodies such as prefectural and municipal governments.

Basic matters related to labor policies

“The basic matters related to labor policies” have seven dimensions as shown in Appendix: I) improvement of work environments, such as shortening of working hours, II) ensuring balanced treatment among workers with different forms of employment, dissemination of various styles of working, and improvement of employment conditions in various pattern or styles of working, III) promotion of more active participation and advancement for diverse human resources, IV) support for balancing work against childcare, long-term care, or medical treatment, V) improvement in quality of human capital and enhancement of vocational ability evaluation, VI) enhancement of support for job-change, re-employment and employment placement, and VII) efforts toward smooth implementation of Work Style Reform.

In terms of the first dimension (I above), specific measures outlined are (1) alleviation of excessively

1. For details, see “Work Style Reform Bill Enacted: Discussions Underway at the Council on the Contents of Specific Procedures,” *Japan Labor Issues* vol. 2, no. 10.

long working hours, (2) prevention of *karoshi* (death from overwork), (3) support, supervision and instruction for small and medium-sized enterprises, (4) promotion of appropriate measures according to the characteristics of industries, (5) raising of wages including the minimum wages and improvements in productivity, (6) enhancement of the functions of occupational physicians and occupational health, (7) ensuring working environments where people can work in safety and health, and (8) ensuring working environments that accommodate diversity, including measures to address workplace harassment.

In order to ensure balanced treatment among workers with different forms of employment, dissemination of various styles of working, and improvement of employment conditions in various patterns or styles of working (dimension II above), specific measures outlined are (1) improving the treatment of non-regular workers, such as ensuring fair treatment regardless of forms of employment or working styles, (2) support for non-regular employees who seek to convert to regular employees, and (3) establishing working environments that easily accommodate flexible work styles.

Measures to promote more active participation and advancement for diverse human resources (dimension III above) include facilitation of more active roles for women, young and elderly workers, persons with disabilities and so forth, establishing working environments for accommodating non-Japanese personnel, and support for more active roles for people with various circumstances and challenges, as well as support for balancing work

against childcare, long-term care, or medical treatment (IV above). Initiatives to improve the quality of human capital (V above) include human resources development through programs such as recurrent education and enhancement of vocational ability evaluation. To enhance support for job-change, re-employment and employment placement (VI above), measures cited include support for workers changing careers to enter growing fields, rendering workplace and job information visible, effective job posting and job seeking information services, and ensuring job opportunities in regional areas.

Basic policy mentions future policy review based on the status of Action Plan implementation

Other important issues covered in the Basic Policies include reinforcement of measures to ensure fair dealing with subcontractors through reform of business practices and improvement of the business environment, and support for improvement of worker productivity so as to improve their working conditions. The Basic Policies also point out the necessity of promoting career awareness and education on labor and employment laws and regulations at the school education level. It is stated that the Basic Policies will be reviewed if it is determined that there is a need for change based on economic and employment situations as well as the status of follow-up on the Action Plan for Work Style Reform.

Appendix. Basic Policies on Labor

■ Basic Matters Related to Labor Policies

I. Improvement of working environments, such as shortening of working hours

(1) Alleviation of excessively long working hours

Spreading of information and adherence to regulations regarding limits on overtime work, designation of periods for taking annual paid leave, strengthening functions of occupational physician and occupational health

Improvement of environment for smoothly taking annual paid leave

Popularization and promotion of system of intervals during working hours

Development of code of conduct for labor standards inspectors

Acceptance of complaints regarding supervision and instruction through various channels

Thorough enforcement of appropriate authority utilizing ombudsman system

(2) Prevention of *karoshi* (death from overwork), etc.

Measures within labor administration organizations for the prevention of *karoshi* (death from overwork), etc.

- Development of systems for conducting research surveys, raising awareness, and offering consultations
- Support for activities of private-sector organizations
- (3) Support, supervision and instruction for small and medium-sized enterprises (SMEs)
 - Development of one-stop consultation system for SMEs
 - Support for companies' efforts to secure human resources and improve productivity
 - Considerate consultations and support, primarily provided by Work Style Reform Promotion and Support Center
 - Promote participation in the smaller enterprise retirement allowance mutual aid scheme and promotion of use of worker asset formation system
 - Spreading knowledge of labor-related laws and regulations, and supervision and guidance taking account of circumstances of SMEs
- (4) Promotion of appropriate measures according to the characteristics of industries
 - Improving environment to alleviate excessively long working hours in automotive transport and construction industry through use of guidelines, etc.
 - Examination of measures to alleviate excessively long working hours for doctors
 - Support for securing human resources and reducing work-hours in sugar manufacturing industry in Kagoshima and Okinawa Prefectures
- (5) Raising of wages including minimum wage and improvements in productivity
 - Minimum wage increase aiming at a national weighted average of 1,000 yen with annual growth rate of approx. 3%
 - Support for productivity improvements, etc. at SMEs
- (6) Enhancement of the functions of occupational physicians and occupational health
 - Strengthening of companies' health management measures such as interviews and guidance for workers with excessively long hours
 - Enhancement of occupational health functions
- (7) Ensuring working environments where people can work in safety and health
 - Promotion of workplace accident prevention plan, and implementation of system for fair, prompt labor accident compensation insurance
- (8) Ensuring working environments that accommodate diversity, including measures to address workplace harassment
 - Efforts toward public awareness and reinforcement of countermeasures against power harassment
 - Consideration of approaches ensuring the effectiveness of employers' actions to prevent sexual harassment, etc. prevention under legal requirements
 - Promotion of correct understanding of sexual preference and gender identity in the workplace

II. Ensuring balanced treatment among workers with different forms of employment, dissemination of various styles of working, and improvement of employment conditions in various pattern or styles of working

- (1) Improving treatment of non-regular workers, such as ensuring fair treatment regardless of employment patterns or styles of working
 - Ensuring thorough awareness of the revised law, and distribution of industry-specific introductory manuals, so as to realize Japan's aims of equal pay for equal work
 - Support for career advancement of non-regular employees
- (2) Support for non-regular employees who seek to convert to regular employees
 - Support for companies in employees' conversion to regular employment
 - Support for workers changing jobs or developing professional abilities
 - Support for companies' smooth response to rules governing conversion to non-fixed-term contracts
- (3) Establishing working environments that easily accommodate flexible work styles
 - Promotion of popularization of employment type telework
 - Public awareness of guidelines for improvement of self-employed telework environment
 - Promotion of side jobs and/or dual jobs and examination of related systemic issues
 - Medium- and long-term consideration of protections for employment-like work styles
 - Promotion of understanding of system and thorough implementation of supervisory guidance regarding discretionary labor system and "highly professional" work system

III. Promotion of more active participation and advancement for diverse human resources

- (1) Facilitation of more active roles for women
 - Examination for securing implementation and effectiveness of the Equal Employment Opportunity Act
 - Promotion of companies' efforts such as action plan formulation based on Act on Women's Participation and Advancement in the Workplace, thorough review of information on women's achievements, and consideration of necessary revisions
 - Employment support for women during childrearing
- (2) Facilitation of more active roles for young workers
 - Support for the young for smooth transition from school to work and retention in the workplace, in cooperation with schools
 - Support for workers in casual employment, etc. who wish to find regular employment
 - Support for vocational autonomy for unemployed youth, etc.

-
- (3) Facilitation of more active roles for elderly workers
 - Environmental improvement for raising continued employment age
 - Reemployment support through expansion of lifelong employment support functions
 - Providing diverse employment opportunities through cooperation of various regional organizations and support from the Silver Human Resources Center
 - Improvement of workplace environment according to elderly persons' physical characteristics
 - (4) Facilitation of more active roles for persons with disabilities, etc.
 - Improvement of work environment according to individuals' situations including prohibition of disability discrimination and provision of reasonable consideration
 - (5) Improvement of environments for accommodating non-Japanese personnel
 - Establishment of system for smooth acceptance of foreign personnel with specific expertise and skills
 - Improvement of employment management of non-Japanese workers, including compliance with labor laws and regulations and securing appropriate working conditions
 - Active use of highly skilled foreign personnel
 - Employment support for international students
 - (6) Support for more active roles for people with various circumstances and challenges
 - Employment support for parents in single-parent households, welfare recipients, persons released from prison, homeless persons, etc.

IV. Support for balancing work against childcare, long-term care, or medical treatment

- (1) Support for balancing work and childcare or long-term care obligations
 - Ensuring reliable implication and public awareness of measures based on the Childcare and Nursing Care Leave Act
 - Promotion of parental leave-taking by men and efforts at SMEs
- (2) Support for balancing work and medical treatment
 - In addition to promotion of employment environment improvements at companies, implementation of general cross-cutting measures including linkage with health care and welfare policies
 - Employment support in cooperation with hospitals in the cancer treatment network

V. Improvement of quality of human capital and enhancement of vocational ability evaluation

- (1) Promotion of human resources development through programs such as recurrent education
 - Enhancement of recurrent education
 - Support for human resource development in companies, and popularization of career counseling
 - Support for workers' autonomous career formation
 - Appropriate implementation of public vocational training
- (2) Enhancement of vocational ability evaluation
 - Maintenance of vocational skills assessment and other measures
 - Promotion of utilization of Job Cards

VI. Enhancement of support for job-change, re-employment and employment placement, etc.

- (1) Support for changing careers to enter growing fields
 - Fostering momentum of mid-career recruitment expansion through utilization of career change guidelines, and support for companies via subsidies
 - Support for employee dispatch and transfer by the Industrial Employment Stabilization Center
- (2) Rendering workplace and job information visible
 - Promotion of rendering workplace information visible via sites where it can be browsed all in one place
 - Construction of sites to provide occupational information
- (3) Providing effective job posting and job seeking information services and ensuring job opportunities in regional areas
 - Effective delivery of job postings by enhancing Internet services
 - Promotion of employment measures tailored to regional circumstances
 - Support measures in disaster-affected areas

VII. Efforts toward smooth implementation of Work Style Reform

Development of cooperative frameworks such as councils among local public entities and members of groups of small and medium-sized business owners and labor organizations, etc.

■ Other important matters pertaining to enabling workers to utilize their abilities effectively

- 1. Review of business practices, improvement of trading environment, etc. Strengthening of measures related to subcontracting transactions
- 2. Support for productivity improvements aimed at bettering working conditions
- 3. Encouragement of vocational and professional awareness at the school stage, and promotion of education on labor-related laws and regulations

Source: MHLW, "The Basic Policies on Labor," <https://www.mhlw.go.jp/content/11602000/000465362.pdf>. Translation is tentative by JILPT.

Article

Poverty and Income Polarization of Married Stay-at-home Mothers in Japan

Part II: What Drives Japanese Women to Be Full-time Housewives despite Poverty?

Yanfei Zhou

I. Why do full-time housewives choose not to work?

Poverty imposes serious disadvantages for children's outcomes in terms of nutrition, health, education, or even maltreatment. Research has shown that children of low-income families actually benefit from making use of day nurseries in their childhood. Put differently, mothers living in poverty can make use of opportunities to send their children to a day nursery and go out to work to create a positive influence on the health and education of their children in the medium to long term (Zhou 2019). Despite this, a highly significant number of women living in poverty choose to be full-time housewives in order to provide care for their children.

Figure 1 shows the reasons given by full-time housewives for not being in employment. Respondents could select up to two main reasons from responses. More than 80% of the respondents selected reasons related to childrearing (responses 1, 2 or 3). This is much larger than the proportion that selected reasons such as poor health or problems within the family (responses 4, 5 or 6), or reasons related to the availability of jobs that were suited to them (response 7 or responses 9 to 11). Among full-time housewives living in poverty, 73.1% selected reasons related to childrearing. A breakdown of their reasons (Table 1) indicates that response 1. "I want to concentrate on childrearing" (48.1%) was the most commonly selected, followed by 2. "There are no jobs that fit with my time constraints" (21.2%) and 3. "There is no childcare available" (13.5%).

A comparison of these results with those

for full-time housewives overall reveals that full-time housewives living in poverty place a somewhat lower emphasis on childrearing as a reason, and somewhat higher emphasis on factors such as health or problems within the family, as shown in Figure 1 (see further III).



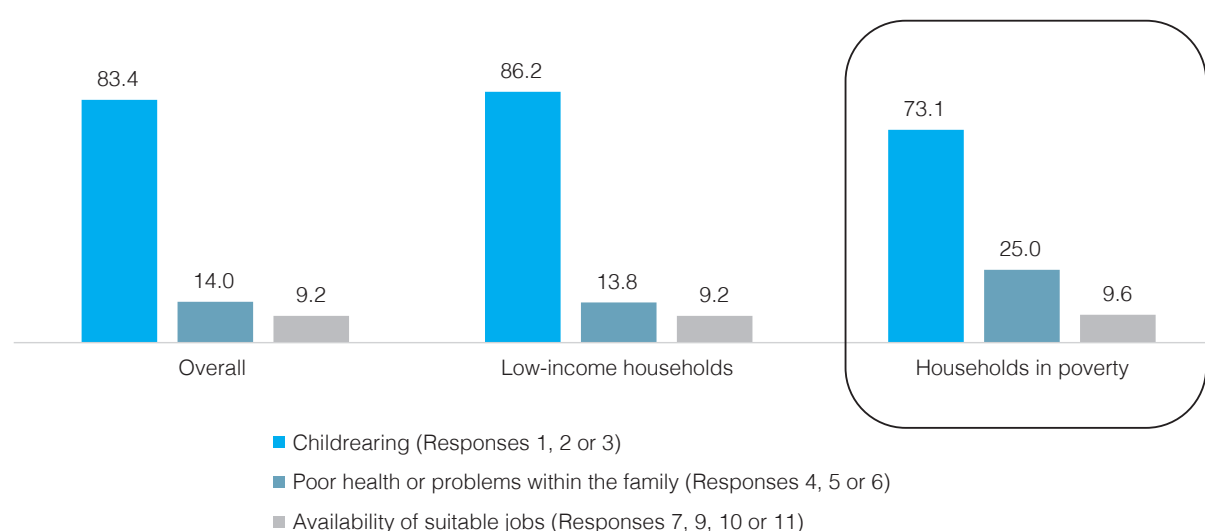
II. Forgone benefits while choosing to be a full-time housewife

In Western countries, if a woman has opted to be a full-time housewife to care for her child, it is natural to assume that the specific reasoning for this is the high cost of childcare. In Japan, however, this does not apply. Authorized day nurseries (children's daycare centers accredited by local municipalities) account for around 90% of the market for childcare services in Japan. The out-of-pocket expense for guardians ranges between 0 and 85,000 yen (about US\$770) per month, depending on the household income, age of the child, number of siblings, and municipality of residence. Children from poor or low-income households are able to use authorized day nurseries for free or for an extremely low cost (Zhou, Oishi, and Ueda 2003). The services provided by authorized day nurseries are in fact a large in-kind income transfer for low-income families. Since the utilization of authorized day nurseries is essentially limited to working mothers, choosing to be a full-time housewife despite poverty in itself means abandoning this large income transfer.

Such behavior by Japanese women can be

Table 1. Full-time housewives' main reasons for not working (% , MA up to 2 choices)

	Overall	Low-income households	Households in poverty
1. I want to concentrate on childrearing	56.5	58.6	48.1
2. There are no jobs that fit with my time constraints	25.9	17.2	21.2
3. There is no childcare available	19.4	25.3	13.5
4. I am unable to work due to health reasons	7.0	9.2	13.5
5. I am facing issues within my family	3.9	2.3	7.7
6. I have to take care of an elderly family member	3.9	2.3	5.8
7. There is no work suited to my age	4.1	4.6	3.8
8. I have no need to work for financial reasons	11.4	3.4	3.8
9. I don't know how to look for work	1.6	2.3	3.8
10. There is no work meeting my income requirement	2.6	3.4	1.9
11. There is no work that will allow me to utilize my knowledge or experience	1.0	0.0	0.0



Source to Table 1 and Figure 1: Statistics using the microdata of the National Survey of Households with Children (NSHC) conducted by JILPT in 2014 (results restricted to married women). To secure a sufficient sample size, statistics on households in poverty are computed by using both the 2014 and 2012 NSHC.

Note: "Low-income households" are households with an annual income of under 5 million yen, while "households in poverty" are those that have an equivalent disposal income that is below the poverty line.

Figure 1. Three types of reason (from responses shown in Table 1)

explained using the theory of "scarcity" developed by behavioral economist Sendhil Mullainathan of Harvard University. Consider how people behave when their daily lives are a struggle with various kinds of "scarcity" that push them to their limits. Arranging to place children in childcare inevitably involves many troublesome tasks, such as gathering accurate information on authorized day nurseries, narrowing down a list of day nurseries to apply for and putting together the application documents. These procedures occur in parallel with starting to look for employment and the preparation of

necessary items for job-hunting, such as a curriculum vitae and a suit to wear for interviews. The short-term "negative rewards" generated by such tasks tend to discourage proactive behavior. Typically, this leads to a decline in skills including the ability to gather information and devise ideas, and particularly the ability to develop long-term plans. For people living with scarcity, this leaves them unable to make a rational choice regarding employment, even if they know that working provides attractive "rewards." The dilemma of being a full-time housewife despite living in poverty arises because such women

are unable to overcome the short-term “negative rewards.”

III. Full-time housewives not by choice

Of course, not all women are choosing to be full-time housewives on their own. Some women, for example, are forced into being full-time housewives due to a supply shortage of authorized day nurseries in their municipality of residence. This issue is referred to in Japanese with the term *taiki jidō* (children on waiting lists). The problem of *taiki jidō* is relatively severe in big cities where child-rearing families are concentrated (Zhou 2015). According to the 2014 National Survey of Households with Children conducted by JILPT, full-time housewives living in poverty tend to be more likely to reside in large cities than working married women. In fact, among full-time housewives living in poverty, 13% have the experience that their children were *taiki jidō* of authorized day nurseries.

Other factors that force women to be full-time housewives include their own poor health condition, problems within the family such as children’s illness, or having to care for elderly family members and so on. In the JILPT survey, 27.0% of full-time housewives living in poverty selected poor health, elderly care or problems within the family as reasons for staying at home (responses 4, 5 and 6 in Table 1).

In the case of issues related to the mother’s own mental health, extensive support is provided for regular employees to facilitate a return to work upon recovery, including in-house consultation services and leave systems. However, part-time workers may not be able to use such support, and therefore they often have no choice but to leave their employment if their health condition makes it necessary to do so.

IV. Comparing market wages with reservation wages

In general, only a small number of full-time housewives living in poverty face unavoidable circumstances that prevent them from working even though they wish to. The great majority have actively chosen to be full-time housewives despite being able to work.

In labor economics, a wife’s choice to stay at home despite her husband having a low income is attributed to her own relatively low market wages and high reservation wages. Put simply, a woman’s choice to become a full-time housewife is the result of her potential market wages being below the lowest wage that she will accept for a job. Housewives who are less educated and have little work experience are associated with low levels of labor productivity, so they may find that the labor market only has low-paid work to offer them. Full-time housewives living in poverty are typically less educated and have little work experience. Their low level of labor productivity means that they are faced with low market wages, which prompts them to choose to be a full-time housewife. Moreover, full-time housewives living in poverty who are raising a number of children or very young children tend to have higher reservation wages, because they may feel that their time doing housework or taking care of their children is relatively more valuable.

Table 2 shows the results of estimates to investigate the kinds of factors that influence the employment probability for women with a low-income husband who is earning income below the poverty line. As can be expected, the factors that determine the wife’s market wage (education, years of social experience, having been a regular employee in her first job, holding professional qualifications) have a significant influence on the employment probability of the wife. More specifically, the probability of a wife being in employment is 26.6 percentage points higher for junior college or specialized training college graduates and 49.6 percentage points higher for university (or graduate school) graduates compared to lower or upper secondary school graduates. Moreover, in comparison with those who do not have any professional qualifications, those who have qualifications as (assistant) nurses, for example, or who hold other professional qualifications in the field of medical care and welfare have an employment probability that is higher by 24.5 percentage points and 9.9 percentage points, respectively. Furthermore, compared to women raising older children (ages

Table 2. Estimation of employment probability for women with low-income husbands (Probit Model)

	Marginal effect
(Main explanatory variables)	
Educational attainment:	
(Base: Lower secondary school/upper secondary school)	
Junior college/specialized training college, etc.	0.2658 ***
University/graduate school	0.4955 ***
Years of social experience	0.1033 ***
Holding professional qualifications:	
(Base: no qualifications)	
Only driver's license	0.0502
Other professional qualifications	0.4169 ***
Professional qualification in the field of medicine and welfare	0.0986 †
Qualification as (assistant) nurse	0.2452 **
Having been a regular employee in her first job	0.1288 **
Age of youngest child:	
(Base: 12–17 years old)	
6–11 years old	–0.4762 ***
3–5 years old	–0.1704 †
0–2 years old	–0.4296 ***
Receiving instrumental assistance from parents	0.1828 ***
Number of <i>taiki jidō</i> (children on waiting lists) in the city of residence:	
(Base: Under 50 people)	
50 to under 200 people	–0.0212
200 to under 400 people	–0.1975 †
400 people and above	–0.1902 *

Source: Zhou (2015)

Note: *** $P < 0.01$, ** $P < 0.05$, * $P < 0.1$ (two-tailed test), † $P < 0.1$ (one-tailed test)

12 to 17), women whose youngest child is younger (ages 6 to 11) have 47.6 percentage points lower employment probability. This result indicates that the value of the time spent in the home also plays an important role in a wife's work choice.

V. The “traps” of social systems that induce women to stay at home

Preferential treatment policies aimed at full-time housewives, including tax and social security systems, have been implemented for a number of years in Japan since the end of World War II. These systems were created with the aim of reducing the burdens on households with full-time housewives, but on the other hand have the effect of reducing the opportunity costs of choosing to be a full-time housewife and raising the reservation wages of married women. These systems consequently serve

as “traps,” or factors that tempt many Japanese women to choose what is seen as the “traditional path,” in which they leave their employment when they have a child, become a full-time housewife, and return to employment in a part-time position once their childrearing commitments have settled rather than continuing their professional careers as regular employees.

1. The “trap” of the tax system

Over 30 years ago, the labor economist Naohiro Yashiro noted that Japan's current tax system implicitly favored households with full-time housewives (Yashiro 1983). The strongest example of this is the “tax deduction for spouses” system. Under this system, if a wife's annual earning is less than 1.03 million yen (about US\$9,500),¹ the tax system grants not only a waiver of her own

1. Since FY 2018 husbands with an annual income exceeding 12.2 million yen are not eligible for the tax deduction for spouses, even if the wife's part-time income is under 1.03 million yen.

income tax obligation, but also a 380,000 yen (about US\$3,500) deduction of her husband's taxable income. The wife has to pay a small amount of income tax when her earning exceeds 1.03 million, but as long as her earning is below 1.41 million yen (about US\$13,000), her husband is still eligible for a reduced amount of tax deduction, which is called the "special tax deduction for spouses" (introduced in 1987).

Under the FY 2017 Tax Reform Outline, the upper limits on a wife's income for eligibility for the "tax deduction for spouse" and the "special tax deduction for spouses" were raised to 1.5 million yen (about US\$13,800) and 2.01 million yen (about US\$18,600), respectively. This makes it easier to continue to benefit from the reduction in the husband's tax liability even if the wife's part-time income increases. Meanwhile, the amendment merely shifted the upper limit from 1.03 to 1.5 million yen, with no changes made to the underlying mechanism of the system, which continued to serve as a form of "subsidy" for full-time housewife families. In fact, by increasing the scope of eligibility for women in part-time employment to fully enjoy tax deductions for their husbands, it even led to the possibility that more women will adjust their working hours or quit their employment as a regular employee and select the path of a full-time housewife.

2. The "trap" of the social security system

The current public pension and medical insurance systems also present advantages for full-time housewives and part-time working housewives. At present, for the wife of a Category II insured person (private employees and civil servants), as long as her annual earning is below 1.3 million yen (about US\$12,000), she is certified as a Category III insured person. Unlike Category I insured persons (self-employed, students, etc.) and Category II insured persons, Category III insured persons are eligible for an equal level of prospective basic pension benefits and medical insurance services but are not required to pay social insurance premiums.

On the other hand, once a wife's annual earning exceeds 1.3 million yen (1.06 million yen if she

works in a large company), her status will be automatically transferred from Category III insured person to Category I insured person. She will then be required to pay social insurance premiums, although nothing will change in relation to her prospective basic pension benefit and medical insurance services. The part-time annual income bracket of 1.3 to 1.5 million yen—where workers must pay social insurance premiums—is also known as the "red zone." Earning an income in this bracket conversely leads to lower combined net incomes for both spouses in comparison with households in which the wife works for an income that is just below the upper limit (that is, an income of 1.29 million yen). This is another "trap" created by the social security system.

3. The "trap" of the spouse allowance

The "traps" are created not only by public social systems, but also by allowance schemes offered in private-sector companies. A typical example of this is the "spouse (family) allowance" that households receive from the husband's company. The Survey of Pay Rates in the Private Sector by Occupation Types conducted by the National Personnel Authority, for example, reveals that by the early 2000s, nearly 90% of private companies with at least 50 employees were providing spouse allowances. As of 2014, the average spouse allowance offered by private companies was 17,282 yen per month (about 210,000 yen or US\$1,900 annually), thus making it a significant contribution to household income.

The spouse allowance is generally paid on the condition that the spouse meets the eligibility requirements for the "tax deduction for spouse" under the tax system, or has the Category III insured person status under the social security system. According to the survey conducted by the National Personnel Authority, as of 2018, 67% of private companies with at least 50 employees have such a spouse allowance system. Of these private companies, as much as 85% have an upper limit on the income of the spouse for the allowance to be paid. Most of the companies set the upper income limit either as 1.03 million yen (66% of all companies) or as 1.3 million yen (30% of all companies) (JILPT 2016).

VI. Policy implications

In Japan, the simultaneous recruiting of new graduates is still the dominant hiring style, and there are limited opportunities for mid-career recruitment. The decision to stay at home while raising children is thus like purchasing a one-way ticket to being a full-time housewife. Women who wish to return to pursuing a career when this becomes possible due to a reduction in their childcare commitments often find that the actual situation is not as straightforward as they had hoped it would be. Since Japan's employment society offers limited opportunities to return to a career, the key to supporting women's career development is to minimize the potential future disadvantages that exist for women when they make a choice. To achieve this, it will be necessary to pursue reforms to eliminate "traps" in the tax, social security and other such social systems, and to introduce "nudges" based on the mechanisms of human behavior.

Eliminating "traps" of social systems will require reforming the tax, social security, and income subsidy systems to ensure that they are more neutral with regard to women's work styles. Rather than simply raising the upper limits on the eligible income bracket and other such partial adjustments, the current system such as the "tax deduction for spouses" and Category III insured person scheme should be fundamentally reformed and a thoroughly new alternative system should be rebuilt.

The introduction of "nudges" entails providing people with information and experience to guide them to make better choices. The specific approaches could be (1) using big data to provide up-to-date, easily comprehensible statistical information on employment choices and future outcomes, (2) demonstrating the potential costs of being a full-time housewife and thereby encouraging people to consider their medium- to long-term prospects when making choices, and (3) providing women with small children an easy way to take a trial utilization of day nurseries.

In the future, remaining in employment and maintaining a non-interrupted career will become

a more and more attractive option for women overall. The biggest challenge is how to continue a career in the early stages of childrearing, which is a stage when most women find it extremely hard to combine work with family commitments. In response to this challenge, it is necessary to shift part of the housework and childrearing responsibility from women to other family members or to society. Encouraging more men to play an active part in tackling these commitments is obviously one of the solutions. It is also important to ensure that women who have already interrupted their careers take advantage of opportunities to return to educational institutions to refresh their professional skills in order to reenter employment smoothly.

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For discussion on the origin of the "full-time housewife" paradigm and the living conditions of stay-at-home mothers' families in poverty in Japan, see Part I "Historical Perspectives of Japanese Full-time Housewives" *Japan Labor Issues*, vol. 3, no. 15 (June 2019).

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The Leakage of Trade Secrets (Customer Data) by the Employees of Contractors

The *Benesse Corporation Customer Data Leakage Case* (Criminal Case)

Tokyo High Court (Mar. 21, 2017) 1180 *Rodo Hanrei* 123

Hirokuni Ikezoe

Facts

This was a criminal case in which the defendant was an employee of a subcontractor, Company K, the end company in a chain of contractors engaged to develop an information system for a project that had been outsourced to Company B by Company A (Benesse Corporation), which were both non-parties to the litigation. The defendant violated the Unfair Competition Prevention Act (UCPA) by downloading around 30 million pieces of customer information—namely, the trade secrets (*eigyō himitsu*) of Company A—and disclosing and selling around 10 million of those pieces to a list broker for the purpose of wrongful gain. The key points at issue were as follows: (i) *himitsu kanri sei*—whether the customer information in question was managed properly as secret, and (ii) whether the defendant was under *eigyō himitsu hoji gimu*—the obligation to maintain confidentiality of the trade secrets.

In the first instance (Tokyo District Court Tachikawa Branch [Mar. 29, 2016] 1180 *Rohan* 133), the court recognized the claims that said customer information was managed as secret and that the defendant was obliged to maintain the confidentiality of the trade secrets, and the defendant was sentenced to three and a half years' penal servitude and a fine of three million yen (approximately US\$27,500). Here we will look at the High Court case that was brought by the defendant to appeal said judgment.

Judgment

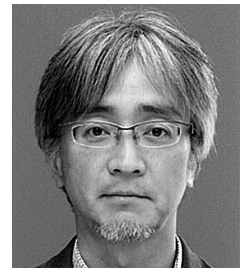
The High Court reversed the judgment of the District Court and issued its own judgment. The defendant was sentenced to two and a half years' penal servitude and a fine of three million yen (namely, the

High Court set a one-year shorter jail term than that set by the District Court).¹

(1) Customer information and whether it is properly managed as secret

According to the essence of the requirements of UCPA Article 2, Paragraph 6² that requires proper management as secret, trade secrets to be protected must be distinct from other information. Without a clear distinction between them, it will be difficult for the people who come into contact with business owners' information to judge whether they are permitted to use said information, thereby potentially hindering the effective use of information. In order for such information to be classed as managed secret, it is not sufficient for the owner to have a subjective will to keep the information secret. It is important that it is sufficiently possible for the people who access said information to recognize that the information is a secret. The owner therefore needs to be taking the reasonable efforts to manage said information, such as placing restrictions upon who can access said information.

In the first instance, the judgment appears to have set the following factors for the information in question to be managed as secret: (i) that it is possible for people who access the information in question to objectively recognize that the information should be kept secret, and (ii) that the reasonable efforts required to protect the secrecy of said information are being taken, such as limiting who has access to the information or other such methods.



However, according to the essence of the UCPA, it is primarily the first of these two points—namely, (i) that the people who access the information objectively recognize it as secret—that is important, and, while the (ii) is a key for determining whether the information is “managed as secret,” it is not acceptable to isolate it from (i). In this case, even though the restrictions on access to customer information and other such measures were unsatisfactory, such that the highly-advanced information management measures expected of a major company had not been established or implemented, the requirements for the information to be classed as managed secret were fulfilled on the whole, provided that the people who accessed said information were able to recognize it as a secret.

Company B, the contractor to which the work was directly entrusted, provides information security training for all employees each year. All employees are also required to confirm that they have attended the training by submitting a form, in which it is specified that it is prohibited to wrongfully disclose personal or classified information. They were also expected to submit a consent form in which they commit to maintain the secrecy of personal and secret information. Moreover, it could also be said that, based on the content and purpose of the system, the information within it, and others, it was easy to recognize that the relevant customer information, which was accumulated in the aforementioned database, was important for the sales and marketing strategies utilized in the business activities of Company A, the company that initially ordered the work, and that said information must remain classified. In this case, the requirements for the information to be classed as managed secret had been fulfilled.

(2) The obligation to maintain confidentiality of trade secrets

The defendant had submitted a written pledge to his employer, Company K, in which he pledged not to take classified information out of the company without the company’s permission. He was also under the obligation to maintain the confidentiality of the classified information he acquired in the

course of his work as prescribed for all employees under the work rules of Company K. Moreover, the outsourcing agreements exchanged between each company also included clauses regarding the confidentiality of classified information. It can therefore be suggested that the classified information that the defendant was handling as part of his work for the primary contractor Company B was also covered under the confidentiality obligations that he held to Company K. However, this does not mean that the defendant was therefore automatically a party to the contract such that he was under obligation to Company B to maintain the confidentiality of the relevant customer information.

At the same time, it must also be noted that in this case the chain of outsourcing consisted of four stages—that is, work was outsourced from Company A to Company B, from Company B to Company O, from Company O to Company Q, and from Company Q to Company K. The outsourcing agreements between Company B and Company O, Company O and Company Q, and Company Q and Company K each fall under what is known as “disguised contracting” (*gisō ukeoi*, where an employer directly supervises and instructs a worker as they would a dispatched worker, while treating them as a subcontractor, in order to avoid administrative responsibility for them). As the defendant was working under direction and orders from Company B, he is recognized as a dispatched worker under Article 2, Item 2, of the Worker Dispatching Act (WDA).³ Under the application by analogy of Article 40-6, Paragraph 1, Item 1 of the WDA⁴ (this clause was not yet in effect when this incident occurred, but its essence can be considered valid even at that time) a direct employment contract is considered to have been formed between the defendant and Company B, and it can be understood that, according to Article 24-4 of the WDA,⁵ the defendant was under the obligation not to disclose to other people any classified information handled over the course of his work.

This therefore meant that as the defendant had submitted to Company B a consent form pledging not to wrongfully disclose to persons outside of the company any classified information acquired in his

work for Company B, the consent form is a valid confidentiality agreement with Company B and the defendant was under an obligation to Company B to protect the classified information acquired in the course of his work. Given that the customer information in this case was classed as classified information under Company B's internal regulations, and that people who came into contact with it were easily able to recognize it as classified information, the defendant is deemed to have had an obligation to Company B to maintain the confidentiality of the relevant customer information.

Commentary

(1) Significance and features of the judgment

This is a precedent of a criminal case that garnered public attention because the leakage involved such a massive data of trade secrets in the form of customer information. In this case, the penal provisions under the UCPA (the cumulative imposition of penal servitude and a fine) were also approved by the High Court, and it can be considered a significant precedent for similar cases (this is thought to be the first case in which the High Court recognized the application of criminal penalties under the UCPA). Moreover, it is surely socially significant as it may serve as a deterrent against similar behavior.

The High Court judgment is also distinctive in the way in which it adopted a slightly different approach to determining whether the information was managed as a secret—which is one of the UCPA's requirements prescribed as trade secret⁶—to that which is typically used in judgments.

From the perspective of labor law, this judgment is also significant in the way in which an interpretation and application of the WDA was adopted to present a legal construction to ensure that workers not under direct employment fulfil their contractual obligation to maintain trade secrets.

(2) The requirements for “trade secret”: whether it is managed as secret to be confidential

According to the judgment, the important factor in determining whether the information is

being managed as secret, is not only the subjective will of the trade secret owner to keep them secret, but also the possibility for the people who come into contact with the trade secrets to objectively recognize them as such. In addition, the high court regards the imposition of access restrictions and other such reasonable efforts for implementing the safeguards as not a requirement, but one of factors in determining whether information can be objectively recognized as secret.

In the conventional scholarly and administrative interpretations, it is understood that for information to be managed as trade secret, it needs to fulfil the two requirements—“the information in question is objectively recognized as being trade secret” and “steps are being taken to restrict access to it.”⁷ In this case, some part of the judgment in the first instance could have shared this interpretation. However, the high court judgment clearly rejects this understanding. That is the distinctive feature of this judgment.

Moreover, among the precedents up until now,⁸ there have been cases in which the protection of trade secrets was denied due to the strict requirements applied in determining whether the information was being treated as secret. Such strict interpretation of managed secret was thought necessary to prevent disputes regarding trade secrets and to clarify the scope of criminal liability responding to the amendments to the UCPA.⁹

However, it has been questioned whether a strict requirements for being managed as secret is in accordance with the purpose of the UCPA, and such requirement could result in excessive burdens, particularly for small and medium-sized companies in practice.¹⁰ There were therefore calls to include the relative standard of whether the people contacting with the trade secrets are able to objectively recognize it as such. Analysis also suggests that, as if in response to this opinion, courts have tended toward a lenient (flexible) judgment of whether information is being managed as secret around the last 12 years.¹¹ This judgment also appears to have entailed a more flexible framework for determining information being managed as secret. More specifically, in this

judgment, this can be seen from the way in which it explores whether the reasonable efforts were adopted to manage trade secret (the fact that it does not demand advanced and rigid management methods) and, while there are typically two factors—namely, that access to the information was restricted and that the information could be objectively recognized as information to be kept—it currently, emphasizes the latter and makes a judgment of the circumstances “as a whole.” This judgment can be seen to have adopted the same mode of thinking as that of judicial precedents and theories in recent years. The current official interpretation is considered to tend toward that of the case described above and other such judicial precedents and theories of scholars.¹²

And yet, it remains controversial whether the kind of approach adopted in this ruling is suitable for the practical application of the law. Indeed, as stated in the judgment, restricting access to information is not so much a factor that can be treated independently, as it is one important factor for determining whether information is managed secret. However, it is not unquestionable that the issue may in practicality be difficult to determine whether information is managed “on the whole,” as it was in this judgment. Trade secrets are extremely important information that forms the core of business administration. Therefore, while the possibility for the person who came into contact with the trade secrets to objectively recognize it as such is important in legally determining whether information is being managed as secret, efforts need to be made to understand how the extent to which the information is “on the whole” being managed as secret that depending on the characteristics and the scale (of the eventual disclosure or leak) of said secret information, and the business owner’s financial power to whom the trade secrets belong, while also taking note of further judicial precedents in the future.

(3) The legal construction regarding the obligation to protect trade secrets

Under the provisions set out by labor laws, it is understood that the obligation to protect trade secrets

is imposed on workers in accordance with the good faith and fair dealing principles that are incidental to the existing contractual relationship.¹³ Previous labor lawsuits regarding violation of the obligation to maintain the confidentiality of trade secrets have focused on the company taking measures against the worker, such as requests for the payment of damages, injunctions, disciplinary action, dismissal, or restriction on the payment of retirement allowances.¹⁴ On the other hand, the UCPA notes trade secrets as one of the interests protected by law, and prescribes remedies¹⁵ for victims of infringements upon the confidentiality of their trade secrets and penal provisions¹⁶ to be imposed upon the perpetrator. In violation of trade secrets under the UCPA, the civil remedies do not—unlike the typical concept adopted in labor law—focus on the obligation to maintain confidentiality as set out in the contractual relationship.¹⁷ However, in criminal cases such as this one, in prescribing the penal provisions—the point which caused an issue here—it is necessary for the perpetrator to have been found to have “breached their duties of management.”¹⁸ These “duties of management” are interpreted as “the duties to protect confidentiality typically imposed in a contract, and the duties to protect confidentiality individually imposed through confidentiality agreements and other such contracts.”¹⁹ Thus, his duty to protect the confidentiality of trade secrets is itself not a concept that originated in the UCPA, but one that has its roots in the contractual relationship. Therefore, in criminal cases such as this, it is necessary to recognize and construct a contractual relationship between the defendant and Company B, which was contracted to conduct the work for Company A, under which the defendant is subject to the obligation to protect trade secrets.

According to the court’s fact finding in this case, the multi-layered outsourcing over a chain of companies, and each outsourcing relationship should be deemed a worker dispatching relationship, as these were cases of disguised contracting. Therefore, by applying the provisions of the WDA, it is possible to construct a direct contractual relationship between Company B, the company to which A had initially outsourced the work, and the defendant, an

employee of the end subcontractor in the chain of the contractors to which the work was outsourced. Such a logical construction seems to be the unique feature of this case.

Work that entails handling trade secrets in the form of electronic information is, as in this case, often conducted as part of multi-layered outsourcing among the information and communications industry, rather than within a direct employment relationship. With this in mind, even in labor relations-focused civil cases that address dispatched labor (disguised contracting) and outsourcing relationships, it is possible that the kind of logical construction adopted in this judgment may be applied in order to recognize that the worker who ultimately engages in the work is under the obligation to maintain confidentiality. In this sense, this case alerts us to the existence of issues that stretch beyond the realms of conventional labor law and to the importance of collaboration and cooperation between the labor laws intended to respond to such circumstances and the related study of the law. In a broader perspective, focusing on the judgment in this case, we could learn measures need to be taken against the wrongful disclosure of companies' important trade secrets.²⁰

1. The High Court reduced the sentence on the grounds (i) that in the outsourcing relationship referred to in this case confidential information was being managed extremely inappropriately, as indicated by the fact that the subcontractor's employees—namely, people whose backgrounds, etc. are unknown—were permitted access to said customer information (that is, important trade secrets that form a fundamental component of the business) and (ii) that it was partially due to the approach of Company B, the company to which the project was initially outsourced, that the database's alert system was not functioning at all, in turn allowing the defendant's behavior to go unchecked for around one year and the damage to grow.

2. UCPA, Article 2, Paragraph 6: "The term 'Trade Secret' as used in this Act means technical or business information useful for business activities, such as manufacturing or marketing methods, that are kept secret and that are not publicly known."

3. WDA, Article 2, Item 2: "'Dispatched Worker' means a worker, employed by an employer, who becomes the object of Worker Dispatching."

4. WDA, Article 40-6, Paragraph 1, Item 1: "In the event that the person(s) receiving the provision of Worker Dispatching services undertake one of acts described in the following items, the person(s) receiving said provision of Worker Dispatching services are at that time deemed to have made the Dispatched Worker who engages in the dispatched work the offer of a labor

contract with the same labor conditions as the labor conditions pertaining to said Dispatched Worker at that time, with the proviso that this does not apply when the person(s) receiving the provision of Worker Dispatching services are unaware, without negligence, that their behavior falls under any of the acts listed in the following items.

Items 2-4 (omitted)

Item 5: When a person receives the provision of Worker Dispatching services under the title of contracting or other such title other than worker dispatching and without prescribing the provisions set out in the items of Article 26, Paragraph 1 (Author's note: Provisions related to the content of the worker dispatching contract), with the intention of avoiding the application of this act or the provisions of the act applied under the provisions of the following clause."

5. WDA, Article 24-4: "A dispatching business operator, as well as his/her agent, employee or other worker, shall not disclose to another person a secret learned with regard to a matter he/she handled in the course of business, unless there are justifiable grounds. The same shall apply to any person who ceased to be a dispatching business operator or his/her agent, employee or other worker."

6. In addition to the requirement for information to be managed as secret (*himitsu kanri-sei*), the requirements that are to be fulfilled for information to be "trade secrets" are that the information is useful (*yūyō-sei*) and is not publicly known (*hikōchi-sei*). UCPA, *supra* note 2.

7. Yoshiyuki Tamura, "Eigyō himitsu no fusei kōi riyō wo meguru saibanrei no dōkō to hōteki na kadai" [Trends in court decisions and legal issues surrounding improper use of trade secrets], *Patent* 66, no.6 (April 2013): 82; Kazuko Takizawa, "Himitsu kanri sei to eigyo himitsu kanri" [Confidentiality requirements for a trade secret and its management], *Waseda Bulletin of International Management* no.46 (2015): 53.

8. For more on the analysis of judicial precedents, see Emi Tsubata, "Eigyō himitsu ni okeru himitsu kanrisei yōken" [Reasonable efforts to maintain secrecy in Trade Secret Law], *Intellectual property law and policy journal* 14 (2007): 191; Takeshi Kondo, "Himitsu kanrisei yōken ni kansuru saiban rei kenkyū" [Swinging back of court decisions about trade secrets], *Intellectual property law and policy journal* 25 (2009): 159; Wataru Sueyoshi, "Eigyo Himitsu" [Trade Secrets in Japan], *The University of Tokyo Law Review* 9 (Oct. 2014): 157.

9. Kondo, *supra* note 8, 201.

10. Tsubata, *supra* note 8, 213; Kondo, *supra* note 8, 201.

11. Takizawa, *supra* note 7, 53; Sueyoshi, *supra* note 8, 165.

12. "Eigyō himitsu kanri shishin" [Guidelines on the management of trade secrets], Ministry of Economy, Trade and Industry, last modified January 23, 2019, <https://www.meti.go.jp/policy/economy/chizai/chiteki/guideline/h31ts.pdf>.

13. Takashi Araki, *Rodo ho* [Labor and employment law] 3rd ed. (Tokyo: Yuhikaku, 2016), 279.

14. Araki, *supra* note 13.

15. UCPA Article 3, Paragraph 1 (Right to Claim for an Injunction): "A person whose business interests have been infringed on or are likely to be infringed on due to Unfair Competition may make a claim to suspend or prevent that infringement, against the person that infringed or is likely to

infringe on the business interests.”

UCPA Article 4 (Damages): “A person who intentionally or negligently infringes on the business interests of another person through Unfair Competition is held liable to compensate damages resulting therefrom”

16. The penal provisions that were an issue in this case are those set out in Article 21, Paragraph 1, Items 3 and 4.

Article 21, Paragraph 1, main clause: “A person who falls under any of the following items will be punished by imprisonment with required labor for not more than ten years, a fine of not more than twenty million yen, or both.”

Item 3: “[A] person to whom the Owner of Trade Secrets has disclosed a Trade Secret, and who, for the purpose of wrongful gain or causing damage to the Owner, obtains a Trade Secret by any of the following means (Author’s note: omitted), in breach of the legal duties regarding the management of the Trade Secret”

Item 4: “[A] person to whom the Owner of Trade Secrets has disclosed the Trade Secret and who, for the purpose of wrongful gain or causing damage to the Owner, uses or discloses Trade Secrets obtained through the means set forth in the preceding item (Author’s note: omitted), in breach of the legal duty regarding the management of the Trade Secret”

17. Protection, remedy, and sanctions regarding trade secrets that do not fall under the classification of trade secrets under the UCPA are therefore dealt with as a contractual issue. Moreover, as long as the information is classed as a trade secret under the UCPA, even after the worker has left their employment, he or she is prohibited from using or disclosing the trade secrets without forming a special contract with their employer for the purpose of

wrongful gain, etc.

18. *See supra* note 16.

19. Hirokazu Aoyama, *Fusei kyoso boshi ho* [Unfair Competition Prevention Law] 5th ed. (Tokyo: Hougakushoin, 2008), 231.

20. This judgment is also covered in a commentary by Keiichiro Hamaguchi in “Gisō ukeoi deatta SE no kokyaku jōhō rōei to fusei kyōsō bōshi hō ihan no umu” [The leakage of customer information by a system engineer hired under a disguised contracting arrangement and whether it constituted a violation of the UCPA] *Jurist*, no. 1528 (2019):119. Hamaguchi explores the judgment from a different perspective from the author.

The *Benesse Corporation Customer Data Leakage Case* (Tokyo High Court, Mar. 21, 2017), 70-1 *judgments* 10. http://www.courts.go.jp/app/files/hanrei_jp/028/087028_hanrei.pdf. See also 1180 *Rodo Hanrei* pp. 123–147.

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▶▶ Human Resource Management

▼ Labor-Management Relations

▼ Labor Market

▼ Labor Administration and Legislation

▼ Social Security System

Current State of Working Hours and Overwork in Japan: Part I: How Has It Changed Over the Years?

Tomohiro Takami

I. Overview of the series

As symbolized by the term *karōshi* (death from overwork), work in Japan has typically been characterized by long working hours and problems of overwork. Has Japanese labor situation changed over the years? What are the related issues today? This series of three articles will explore the current state of working hours in Japan, with a particular focus on overwork.

Part I overviews the characteristics of working hours in Japan in international or longitudinal comparison. It also investigates the background to long working hours, addressing the regulations including the amendments that have been made to related laws in recent years. Part II will focus on the relationship between the Japanese-style employment system and working hours. Companies' employment systems play a considerable role in the factors that contribute to employees' working hours. Discussion in recent years has therefore explored toward steps such as revising the working styles in companies as well as industry practices to reduce working hours. Finally, Part III will consider the distinctive features of overwork at present and the measures that can be taken against it. Current diverse working styles stem from the growth of service industry or workers' diverse preferences. There are calls for environmental improvements to the industrial society to allow for those new ways of working. Touching on the current issues, the article examines what measures need to be adopted in terms of workers' health, family lives, well-being, and other such factors.

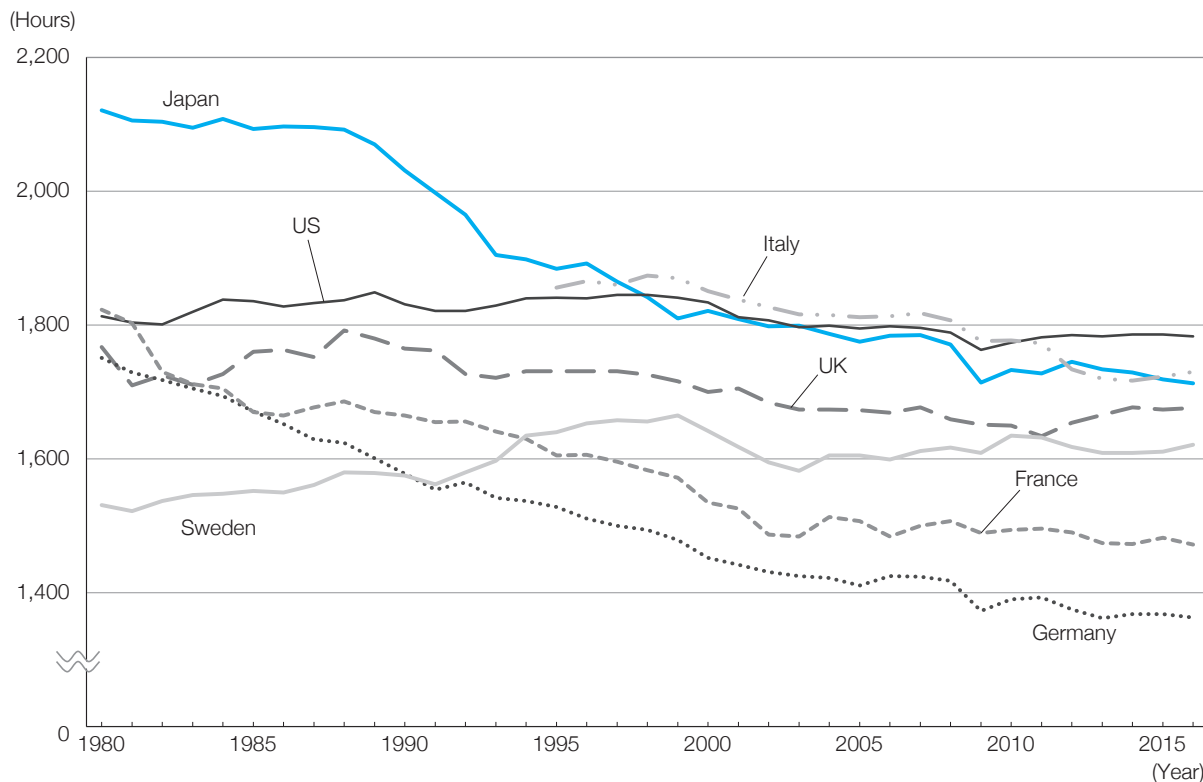
II. Working hours of major countries decreasing on average

Let us start by looking at an international comparison of statistical data. Figure 1 shows the trends in average annual hours actually worked per worker in major industrial countries. In the long term, working hours are on the decrease in most developed countries. This decrease in working hours has been attributed to factors such as the rise in productivity along with the development of industry or the results of labor movements.

What distinctive characteristics do working hours in Japan show in comparison with other countries? Up until the 1980s, they were extremely long when compared with those of other developed countries. Since then, following a significant decrease in the period from the end of the 1980s to the early 1990s, working hours in Japan have been consistently on the decrease. In recent years, Japanese working hours can be described as at a similar level to those in the US and the UK, but are still long in comparison with developed countries such as France, Germany, and Scandinavian nations.¹

The reduction in working hours in Japan from the end of the 1980s was largely due to the effect of legal policies. In the 1980s, Japanese workers became the target of criticism from Europe and the US that they were “overworking” in terms of fair international competition.² At around the same time, people in Japan themselves began to reconsider the conventional values that had justified long working





Source: OECD Data, "Hours worked," <https://data.oecd.org/emp/hours-worked.htm>. Quoted in Japan Institute for Labour Policy and Training (JILPT), *Databook of International Labour Statistics 2018* (Tokyo: JILPT, 2018), figure 6-1, 203.

Figure 1. International comparison of average annual hours actually worked per worker

hours in the society. In response to such awareness of the problem, the reduction of working hours became a major policy issue, aiming at 1,800 working hours per year, the level of the US and Europe. The statutory working hours were in fact reduced from 48 to 40 hours per week with the 1987 amendment to the Labor Standards Act and have been set at a 40-hour workweek and 8-hour workday since then. As the result of further amendments to the act, the system of a "5-day workweek" was quickly adopted by an increasing number of employers in the 1990s.

III. The persistence of long working hours

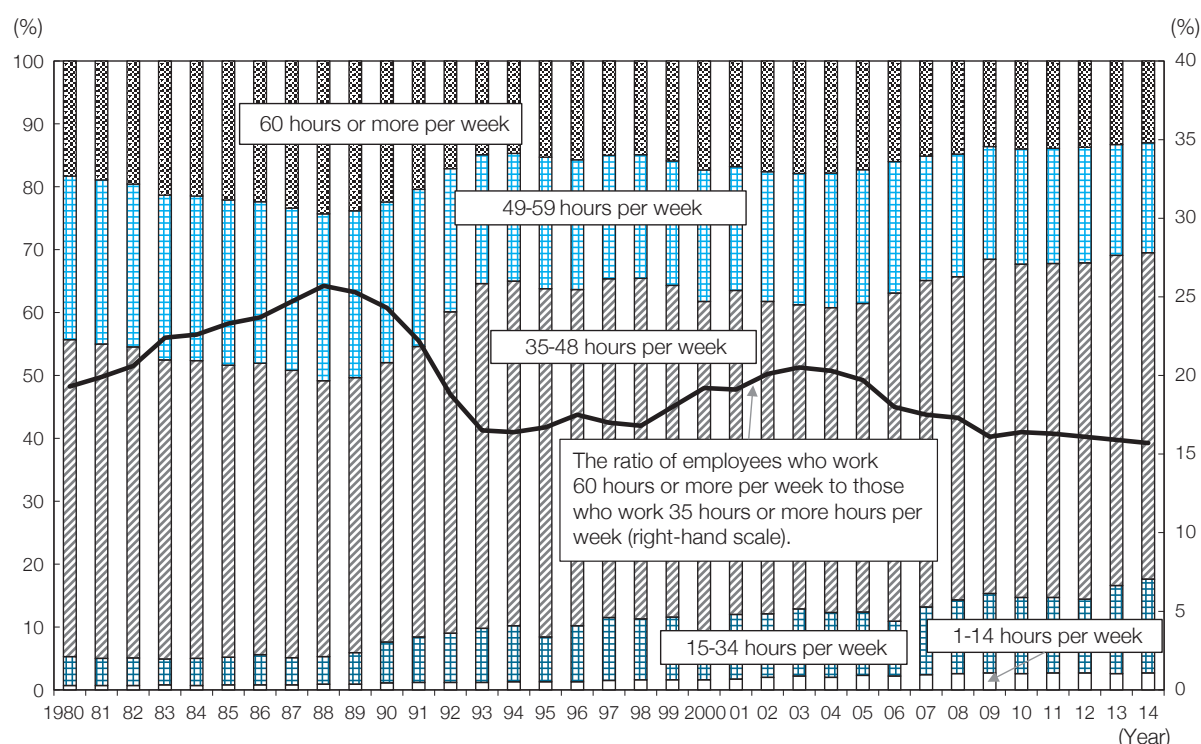
While working hours in Japan have been decreasing on average, this does not mean that all workers are working shorter hours. This is because the average reduction in working hours in recent years can be significantly attributed to the increase in the numbers of (largely female) part-time workers. Though the sharp decline in the working hours

during the end of the 1980s through the early 1990s is thought to be the result of legal amendments, working hours of regular employees have seen little decrease in the period since then.

Figure 2 shows trends in the breakdown of the working hours of male employees (including non-regular employees) over the years. We can see that the percentage of employees working "60 hours or more per week" has been gradually decreasing since its peak in 1998. However, combined with the percentage of employees working "49-59 hours per week," we can also find that there is still a certain percentage of employees working long hours.³ As far as Figure 2 suggests, long working hours still exist—largely among regular employees.

IV. The factors behind long working hours: insufficient regulation

Why state of overwork in Japan remain unchanged? There are various possible factors, but



Source: Prepared by Office of Counsellor for Labour Policy Planning of MHLW, based on the MIC's *Labour Force Survey* (Basic Tabulation).

Notes: 1. Data for workers on leave or workers whose working hours are unknown has been excluded.

2. Averages over the 12 months of each year.

3. Values for 2011 do not include Iwate, Miyagi, and Fukushima Prefectures.

Figure 2. Trends in the breakdown of hours worked in the final week of the month (male employees)

here we will focus on the characteristics of the legal system.

As noted above, the Labor Standards Act stipulates a 40-hour workweek and an 8-hour workday as the upper limits on working hours (“statutory working hours”). Employers are obliged to establish the starting and ending time of work (“prescribed working hours”) to ensure that workers do not work beyond the statutory working hours. However, overtime work beyond the statutory working hours is permitted, provided that the necessary procedures are followed. Under Article 36 of the Act, when an employer concludes a labor-management agreement with a labor union organized by a majority of the workers in the establishment or with a person representing the majority of the workers—known as an “Article 36 Agreement (*saburoku kyotei*)”—and submits it to their local Labor Standards Inspection Office, the employer is

not subject to sanctions even if they allow workers to work beyond the statutory working hours or on days off.

It was often suggested that these regulations on overtime in Japan had little practical effect on restriction of overtime work, because there was formerly no binding limitation on extension of working hours that could be negotiated under an Article 36 Agreement. While in 1998 the government stipulated a limitation of overtime recognized under an Article 36 Agreement, this was merely a non-legally binding administrative guidance. This lack of legal provisions to place cap on overtime and impose penalties for violations has continuously been highlighted by critics of the legislation as it is insufficient to prevent overtime work.

Since the Act on the Arrangement of Relevant Acts on Promoting Work Style Reform (“Work Style Reform Act”) was enacted in 2018 (and put

into effect in 2019), there is considerable public attention to the potential changes in working hours. The key feature of this new act includes its provision of definite upper limits on overtime hours—namely, 45 hours per month and 360 hours per year.⁴ In addition, employers that violate these limits will now be punished.

As we have seen, Japan's legal regulations are said to lack the force to deter long working hours and discussion has been directed at strengthening legislation. However, the long working hours is attributable to not only insufficient regulation but also Japanese-style employment systems, industry practices, company systems, workplace customs, and people's values on work. All of these factors are inextricably embedded in this issue. We shall examine them in the next part of this series.

Notes

1. Among the OECD countries, the average hours worked per

year in South Korea for 2016 were 2,069 hours, longer than those of Japan.

2. In the 1980s, Japan's vast trade surplus (particularly the trade imbalance between Japan and the US), coupled with the appreciation of the yen became an issue. Consequently, Japanese people's long working hours also faced international criticism that they constituted "social dumping."
3. The percentage of male employees working 60 hours or more per week has decreased in comparison with that in the late 1980s but has seen no significant change since the 1990s.
4. It is permitted to conclude a labor-management agreement for working hours beyond this limit in extraordinary, special circumstances. But the law also prescribes a separate upper limit for working hours in such cases.

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Economy

The Japanese economy is recovering at a moderate pace while weakness in exports and industrial production continues. Concerning short-term prospects, weakness remains for the time being, but the economy is expected to continue recovering, supported by the effects of the policies, while employment and income situation is improving. However, further attention should be given to the effects of situations over trade issues on the world economy, while the prospect of the Chinese economy, the uncertainty of situations and policies in overseas economies and the effects of fluctuations in the financial and capital markets also need attention. (*Monthly Economic Report*,¹ May, 2019).

Employment and unemployment (See Figure 1)

The number of employees in April increased by 430 thousand over the previous year. The unemployment rate, seasonally adjusted, was 2.4%.² Active job openings-to-applicants ratio³ in April, seasonally adjusted, was 1.63.⁴

Wages and working hours (See Figure 2)

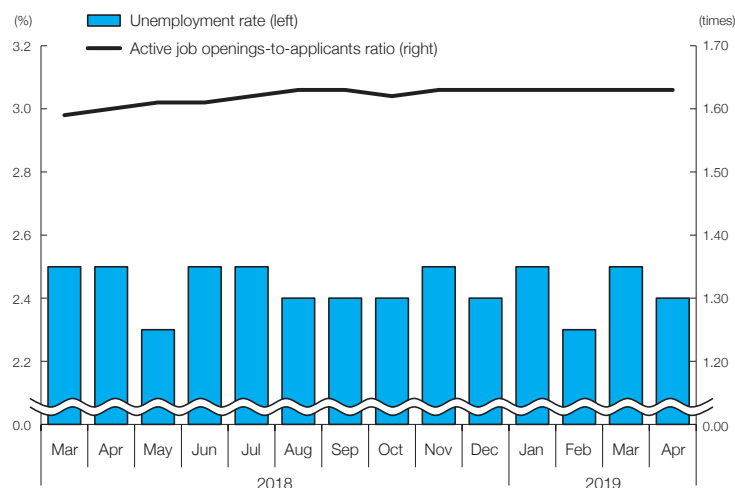
In March, total cash earnings (for establishments with 5 or more employees) decreased by 1.3% and real wages (total cash earnings) decreased by 1.9% year-on-year. Total hours worked decreased by 2.7% year-on-year, while scheduled hours worked decreased by 2.6%.⁵

Consumer price index

In April, the consumer price index for all items increased by 0.9% year-on-year, the consumer price index for all items less fresh food rose by 0.9%, and the consumer price index for all items less fresh food and energy increased 0.6% year-on-year.⁶

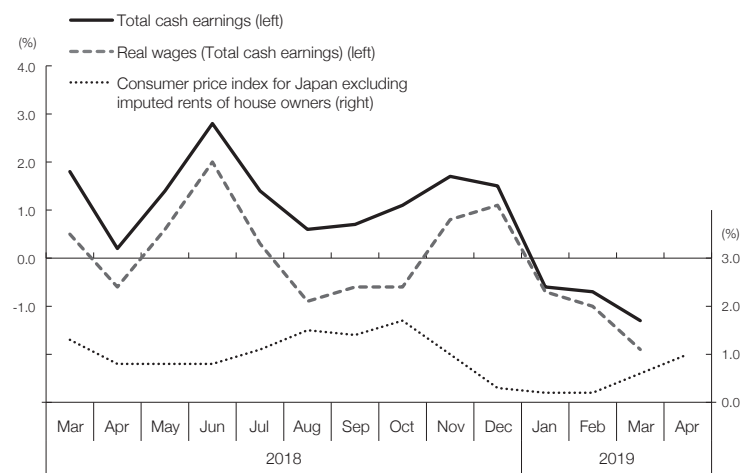
Workers' household economy

In April, consumption expenditure by workers' households increased by 0.7% year-on-year nominally and decreased by 0.3% in real terms.⁷



Source: Labour Force Survey²; Employment Referrals for General Workers.⁴

Figure 1. Unemployment rate and active job openings-to-applicants ratio (seasonally adjusted)



Source: Monthly Labour Survey⁵; Consumer Price Index.⁶

Figure 2. Total cash earnings / real wages annual percent change

See JILPT Main Labor Economic Indicators for details at <https://www.jil.go.jp/english/estatis/eshuyo/index.html>

Notes: 1. Cabinet Office, *Monthly Economic Report* analyzes trends in the Japanese and world economics, and indicating the assessment by the Japanese government. Published once a month. <http://www5.cao.go.jp/keizai3/getsurei-e/index-e.html>

2. Ministry of Internal Affairs and Communications (MIC), *Labour Force Survey*.

<http://www.stat.go.jp/english/data/roudou/results/month/index.htm>

3. Active job openings-to-applicants ratio: An indicator published monthly by Ministry of Health, Labour and Welfare (MHLW), showing the tightness of labor supply and demand. It indicates the number of job openings per job applicant at public employment security offices.

4. MHLW, *Employment Referrals for General Workers*. http://www.mhlw.go.jp/english/database/db-l/general_workers.html

5. MHLW, *Monthly Labour Survey*. <http://www.mhlw.go.jp/english/database/db-l/monthly-labour.html>

6. MIC, *Consumer Price Index*. <http://www.stat.go.jp/english/data/cpi/index.htm>

7. MIC, *Family Income and Expenditure Survey*. <http://www.stat.go.jp/english/data/kakei/index.htm>

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Japan Labor Issues

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tentative

Country Reports by promising researchers presented at the 3rd JILPT Tokyo Comparative Labor Policy Seminar (Tokyo, March 4-5, 2019) on “The Future of Women and Work—Policy Responses to Women’s Employment”

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Korea/Gender Wage Gap in Korea in Lifecycle Perspective, Selim CHOI

Malaysia/Women Left Behind? Closing the Gender Gap in Malaysia, Beatrice Fui Yee LIM

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Japan/Women’s Employment Status and Family Responsibility in Japan: Focusing on Breadwinner Role, Shingou IKEDA

Singapore/Work-Life Experiences, Policies, and Challenges in Singapore, Aliya Hamid RAO

Vietnam/The Labour Rights of Women in Vietnam, Trang Thi Kieu TRAN

Taiwan/Legal Policies on Gender Equal Pay in Taiwan, Yu-Fan CHIU

Australia/The Promotion of Gender Equality at Work in Australia through Law and Policy: A Work in Progress, Adriana ORIFICI

* Entries are arranged based on the seminar program.



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